

**PROPOSED ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
ADOPTING EMERGENCY RULES**

The scope statement for this rule, SS 006-16, was published in Register No. 721B, on January 25, 2016, and approved by State Superintendent Tony Evers on February 8, 2016. Pursuant to *Coyne v. Walker*, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope for this rule. *Coyne v. Walker*, 2015 WI App 21, 361 Wis.2d 255.

The state superintendent of public instruction hereby proposes to amend s. PI 5.035 (6), relating to the passing score for GED tests.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 115.29 (4), Stats.

Statutory authority: ss. 115.29 (4) (a) and 227.10 (1) and (2m), Stats.

Explanation of agency authority:

The state superintendent is given authority to establish standards regarding GED tests under 115.29 (4) (a), Stats. Specifically, s. 115.29 (4) (a), Stats., provides:

115.29 General powers. The state superintendent may:

(4) High school graduation equivalency.

(a) Grant a declaration of equivalency of high school graduation to an individual if the individual has successfully completed the civics test required under s. 118.33 (1m) (a) and if, in the state superintendent's judgment, the individual has presented satisfactory evidence of having completed a recognized high school course of study or its equivalent. The state superintendent may establish the standards by which high school graduation equivalency is determined. Such standards may consist of evidence of high school courses completed in high schools recognized by the proper authorities as accredited, results of examinations given by or at the request of the state superintendent, successful completion of correspondence study courses given by acceptable correspondence study schools, a general educational development certificate of high school equivalency issued by an agency of the U.S. government, course credits received in schools meeting the approval of the state superintendent, or other standards established by the state superintendent.

Under s. 227.10 (1), Stats., "each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute." Further, s. 227.10 (2m), Stats., provides that "no agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter." As such, a rule is required to implement and establish standards regarding GED tests under 115.29 (4) (a), Stats.

Related statute or rule: N/A

Plain language analysis:

PI 5 governs the issuance of high school equivalency completion credentials by the State Superintendent, which includes the certificate for completion of the General Educational Development (GED) Test and the High School Equivalency Diploma (HSED). This rule change is designed to align the rule, with respect to the cut score for the GED Test, with the recommendation of GED Testing Service.

Summary of, and comparison with, existing or proposed federal regulations: N/A

Comparison with rules in adjacent states: Adjacent states have adopted or will be adopting the change in the cut score to align with the recommendation of GED Testing Service.

Summary of factual data and analytical methodologies:

GED Testing Service changed its passing score for the general educational development test pursuant to guidance issued on January 19, 2016. Therefore, the state superintendent wishes to align this rule to the new passing score.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A

Anticipated costs incurred by private sector: N/A

Effect on small business: The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Agency contact person: (including email and telephone)

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Place where comments are to be submitted and deadline for submission:

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at Carl.Bryan@dpi.wi.gov. The department will publish a hearing notice in the *Administrative Register* that will provide information on the deadline for the submission of comments.

SECTION 1. PI 5.035 (6) is amended to read:

(6) Based on the process specified under sub. (3), the state superintendent establishes the general educational development subtest and test passing scores. A minimum standard score of no less than ~~150~~ the score set by GED Testing Service shall be required on each subtest in the battery of 4 subtests.

SECTION 2. STATEMENT OF EMERGENCY

FINDING OF EMERGENCY

Recent guidance regarding the passing score for the general educational development (GED) test was provided to states by GED Testing Service on January 19, 2016 with an effective date of March 1, 2016. Since the change in cut score will result in the issuance of credentials on March 1, 2016 forward, emergency rules are needed to implement the change for individuals who will be taking the GED tests.

SECTION 3. EFFECTIVE DATE:

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.